

## **REMARKS**

### **Status of the Claims**

Claims 1-14 are pending; claims 15-29 have been canceled. All canceled subject matter was canceled without prejudice to its assertion in a continuing application.

### **Claim Objections**

Claim 4 was objected to as containing a misspelling. The Applicants thank the Examiner for identifying this error and they have corrected it.

### **Rejection Based on 35 U.S.C. §112, First Paragraph**

Claim 4 stands rejected as allegedly failing to comply with the written description requirement. While Applicants respectfully disagree with the Office, in an effort to expedite the prosecution of this application, then have amended claim 4 to read as follows: "where the chromogenic substrate is para-nitroaniline." In light of this amendment, Applicants request reconsideration and withdrawal of this rejection.

### **Rejection Based on 35 U.S.C. §103(a)**

Claims 1-3 and 5-13 stand rejected as allegedly being obvious over Jenny et al. (U.S. 7,049,087, hereinafter "Jenny patent") in view of Butenas et al. (1993). As noted by the Office, the Jenny patent is prior art only under 35 U.S.C. §102(e). Further, as noted by the Office, the rejection may be overcome by "(2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131.

In response, Applicants submit herewith the "Declaration of Richard Jenny Pursuant to 37 C.F.R. §1.131." In this declaration, Dr. Jenny states that the claimed subject matter was first conceived in the U.S. before November 5, 2002, which is the earliest possible effective filing date for the relied-upon subject matter in U.S. Patent No. 7,049,087. Dr. Jenny also included an exhibit to his declaration, which is a photocopy of a Grant application that he submitted to the U.S. Department of Health and Human Services on July 31, 2002. This exhibit is directed to the currently claimed subject matter and demonstrates conception and reduction to practice at least as early as July 31, 2002.

In light of Dr. Jenny's declaration, Applicants submit that Jenny patent is not prior art under 35 U.S.C. § 102(e) and as a result, reconsideration and withdrawal of this rejection is requested.

Claims 1-3 and 5-14 stand rejected as allegedly being obvious over Jenny et al. (U.S. 7,049,087, hereinafter "Jenny patent") in view of Butenas et al. (1993) and Butenas (1994). For the reason set forth above, Applicants submit that the Jenny patent is not prior art under 35 U.S.C. § 102(e) and they request reconsideration and withdrawal of this rejection.


### CONCLUSION

The Applicants invite the Examiner to contact the Applicants' undersigned representative at (312) 913-2136 if the Examiner believes that this would expedite prosecution of this application.

Respectfully submitted,

DATED: December 22, 2008

By:

  
Bradley W. Crawford  
Reg. No. 50,494

McDONNELL BOEHNEN  
HULBERT & BERGHOFF LLP  
300 South Wacker Drive  
Chicago, Illinois 60606